

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 18 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

VINCENT KIPKEMOI SIELE.....ACCUSED

RULING ON SENTENCE

1. In the judgment of this court dated 4th October 2018, I found the accused, Vincent Kipkemoi Siele, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that the accused had, with malice aforethought, on the 16th of September 2015, at Chepkemel centre, murdered Bernard Kiptoo Rono. The state indicated that the accused in this case may be treated as a first offender.

2. In mitigation on behalf of the accused, Ms. Koech stated that he had spent some time in remand before he was granted bail and had had time to reflect on his actions. He was remorseful and was asking the court to grant him a non-custodial sentence. His elderly parents and three sisters were dependent on him, and he was 28 years old and would like to start a family.

3. In a report filed on 5th November 2018 pursuant to orders of this court, the Probation Officer indicates that the accused had no previous record, and that he was drunk at the time of the incident resulting in this matter. He notes, however, that the accused has a pending case of attempted rape, being Sexual Offence Case No. 45 of 2018, in respect of which he was released on a bond of Kshs 200,000.

4. I have considered the mitigation offered on behalf of the accused and the report filed by the Probation Office. The sentence mandated by law for the offence of murder under section 204 of the Penal Code is the death penalty. However, following the decision of the Supreme Court in **Francis Karioko Muruatetu v R Supreme Court Petition Nos. 15 and 16 of 2015**, the court has discretion to give a lesser sentence. In doing so, in accordance with the Supreme Court guidelines in the **Muruatetu** case, it should consider, among other things, whether the accused is a first offender, his age, the character and record of the offender, whether he is remorseful, and the possibility of reform and social re-adaptation of the offender.

5. The accused in this case is 28 years old. While it was stated on his behalf that he is remorseful and is a first offender, there is an indication in the Probation Officer's report that while he was out on bail during the pendency of this case, he was arrested and charged with attempted rape. The case is still pending.

6. The accused has expressed remorse. He indicated to the Probation Officer that he was drunk at the time of the murder of the deceased and does not know what happened. However, the fact that he was the aggressor, that he was the one who started the quarrel with the deceased, the fact that he had a knife which he used to stab the deceased shows that he knew well what he was doing, and the consequences of his actions.

7. Even had the law allowed the court to impose a non-custodial sentence in a case of murder, which it does not, in my view, the accused in this case merits a custodial sentence, to learn the error of his ways, and to appreciate that every life is worthwhile, and should not be taken away, less so over so insignificant a matter as a quarrel over cigarettes.

8. In the circumstances, I hereby sentence the accused to serve a term of imprisonment for 25 years. He has a right of appeal within 14 days.

Dated, Delivered and Signed at Kericho this 21st day of November 2018

MUMBI NGUGI

JUDGE

In the presence of:

Nelson Kenei – Court Assistant

Ms Keli- For Director of Public Prosecutions

Mr. Koske holding brief for Ms Koech for accused